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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re MARIO V, a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B201228
(Super. Ct. No. J1121393)
(Santa Barbara County)

THE PEOPLE,

Plaintiff and Respondent,

v.

M. V.,

Defendant and Appellant.

M. V. appeals from a juvenile court order committing him to the California Youth Authority, now known as the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), for a maximum confinement period of five years seven months. Appellant contends that the July 24, 2007 commitment order must be reversed due to recent changes to Welfare and Institutions Code sections 731 and 733.¹ We affirm. (*People v. Brandon G.* (2008) 160 Cal.App.4th 1076, 1081; *In re Carl N.* (2008) 160 Cal.App.4th 423, 435.)

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

Procedural History

In June 2004, appellant was declared a ward of the court after he admitted a section 602 petition for unlawful driving/taking of a vehicle. (Veh. Code, § 10851, subd. (a)). The trial court declared the offense a misdemeanor and granted probation. Between August 17, 2004 and August 15, 2005, appellant violated probation on nine separate occasions for truancy, refusing to attend school, violating house arrest terms, associating with individuals prohibited by probation, and smoking marijuana. (§ 777, subd. (a).)

From September 22, 2005 to April 18, 2007, the trial court sustained five more section 602 petitions for felony unlawful taking/driving of a vehicle (Veh. Code, § 10851, subd. (a)), battery of school park or hospital property (Pen. Code, §§ 243.2, subd. (a)), failing to register as a gang member (Pen. Code, § 186.33), battery (Pen. Code, § 242), and battery resulting in serious bodily injury (Pen. Code, § 243, subd. (d)).

Appellant also admitted separate probation violations between September 13, 2006 and June 4, 2007 for failing to comply with camp staff orders, refusing to return to camp after a home visit and going AWOL, and absconding from a group home. (§ 777, subd. (a).) The last probation violation occurred after appellant was placed in the Quality Group Homes Program. Appellant refused to participate in drug and alcohol counseling, attend school, submit to chemical testing, adhere to staff directives, and left the program without permission on three occasions. On June 4, 2007, he participated in a fight and struck a fellow resident five times.

The probation department disposition report stated that appellant had exhausted all dispositional alternatives short of DJF, was affiliated with a street gang, and continues to assault people. On July 24, 2007, the trial court committed appellant to DJF for a maximum confinement period of five years seven months, with credit for 658 days served.

New Criterion for DJF Commitments

Appellant argues that recently enacted changes to sections 731 and 733 bars his commitment to DJF. Operative September 1, 2007, the Legislature changed the

eligibility criterion for DJF commitments. (See West's Cal. Legislative Service (2007) ch. 175, §§ 19-22, pp. 1738-1739.) Sections 731 was amended and 733 was repealed and added to limit DJF commitments to youth offenders who commit serious offenses enumerated under section 707, subdivision (b).

Appellant contends that his commitment should be reversed because his most recent offense (battery) is not an enumerated offense. Statutory amendments that lessen punishment may be given retroactive effect where there is no savings clause and the case is not yet final. (See *In re Estrada* (1965) 63 Cal.2d 740, 748.) Appellant asserts that the legislative changes are ameliorative because a commitment to a DJF state facility is more punitive and more restrictive than a commitment to a local facility (juvenile hall or camp).

We reject the argument because the statutory changes do not reduce the punishment and were not intended to be retroactive. "A new or amended statute applies prospectively only, unless the Legislature clearly expresses an intent that it operate retroactively. [Citation.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 664.) The *Estrada* rule of lenity "is not implicated whether the Legislature clearly signals its intent to make the amendment prospective, by the inclusion of either an express saving clause or its equivalent." (*People v. Nasalga* (1996) 12 Cal.4th 784, 793.)

Here the legislative intent is clear. The last sentence of subdivision (c), section 733 states that the section is to be applied "on or after September 1, 2007."² The phrase "on or after" indicates that the Legislature intended the statutory changes to apply

² Section 733 states in pertinent part: "A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities: [¶] . . . [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in paragraph (3) of subdivision (d) of Section 290 of the Penal Code. *This subdivision shall be effective on and after September 1, 2007.*" (Emphasis added.)

prospectively. Section 731 does not contain a specific operative date but refers to section 733 which applies to dispositions on or after September 1, 2007.

The Fourth District Court of Appeal, in *People v. Brandon G.*, *supra*, 160 Cal.App.4th 1076, held that sections 731 and 733 apply prospectively. "Section 733, subdivision (c) shows no retroactive intent on its face; it states, 'This subdivision shall be effective on or after September 1, 2007.'" (*Id.*, at p. 1081.)

In re Carl N., *supra*, 160 Cal.App.4th 423, the Second District Court of Appeal reached a similar conclusion and held that the changes to sections 731 and 733 do not apply retroactively. "[S]ections 731 and 733 do not address punishment or penalties for criminal offenses. Rather, they govern *where a juvenile delinquent may serve time* for purposes of rehabilitation. [Citations.]" (*Id.*, at p. 438; emphasis added.) The court noted that section 731.1 was enacted as part of the same legislation that became operative on September 1, 2007. "[Section 731.1 is essentially a nonretroactively clause that applies to sections 731 and 733" and provides a two step process for addressing DJF commitments occurring before September 1, 2007 based on conduct that was not a section 707 subdivision (b).³ (*Id.*, at p. 437.)

We adopt the same analysis and hold that the Legislature intended sections 731 and 733, as amended and enacted, to apply prospectively to dispositions on and after September 1, 2007. The statutory changes do not reduce or lessen the punishment which is consistent with the rehabilitative objectives of the law. (See § 202, subd. (b); *In re*

³ Section 731.1 confers joint discretion on the probation department and the trial court to recall a ward who was committed to DJF for offenses that do not now qualify for a DJF placement. (See *In re Carl N.*, *supra*, 160 Cal.App.4th at pp. 437-438.) Section 731.1 states in pertinent part: "Notwithstanding any other law, the court committing a ward to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, upon the recommendation of the chief probation officer of the county, may recall the commitment in the case of any ward who commitment offense was not an offense listed in subdivision (b) of Section 707 . . . , and who remains confined in an institution operated by the division on or after September 1, 2007."

Ismael A. (1989) 207 Cal.App.3d 911, 916-919.) The statutory changes affect placement, not punishment. Juvenile offenders tried and committed before September 1, 2007, as opposed to those committed after the effective date for the same crime, receive the same maximum possible term.

We reject the argument that the order committing appellant to DJF should be reversed or that appellant is entitled to a new dispositional hearing. (*People v. Brandon G.*, *supra*, 160 Cal.App.4th at p. 1080; *In re Car N.I.*, *supra*, 160 Cal.App.4th at p., 435.)

The judgment (order committing appellant to DJF)) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

James E. Herman, Judge
Superior Court County of Santa Barbara

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